



Challenges to Commercial Arbitration of Pakistan: Judicial Intervention and Bad Faith of Parties

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ABSTRACT

This article explores key challenges to commercial arbitration in Pakistan: such as judicial intervention, and bad faith by the parties. It discusses how the Arbitration Act of 1940 allows judicial interventions, while Section 32 explicitly bars. However, courts sometimes overstep their bounds. The focus of this article is primarily on judicial intervention, though bad faith by the parties is also considered, as they also harm the arbitration process. The author believes that judicial intervention can be addressed. In contrast, eliminating bad faith entirely is a utopian idea. Morality should be left to the discretion of the parties, with judges responsible for upholding the law and ensuring the integrity of arbitration. Pakistan's arbitration framework, governed by the Arbitration Act 1940 and the proposed Arbitration Act 2024, continues to suffer from significant gaps that hinder the effectiveness of commercial arbitration. One of the key shortcomings is the failure to fully incorporate the UNCITRAL Model Law, leaving the legal framework outdated and misaligned with international best practices. A critical issue is the broad scope for judicial intervention, particularly in appeals, which undermines the finality of arbitral awards and defeats the purpose of efficient dispute resolution. Strengthening the authority of arbitrators and limiting excessive court interference should be a legislative priority. Critical analysis and some important recommendations for a new draft bill are provided in this article. Moreover, jurisdictions such as Singapore, which have successfully modernized their arbitration laws to support a pro-arbitration approach, can serve as an inspiration.



Introduction

Arbitration is a form of Alternative Dispute Resolution (ADR) in which an arbitrator is appointed by the parties to settle any present or future disputes between them. The origins of arbitration can be traced back to ancient Greece, where the concept of peacefully resolving international disputes first emerged and developed.¹ Today, arbitration is a widely utilised alternative dispute resolution mechanism, particularly prevalent in developed countries and facing challenges in developing countries such as Pakistan. Businesses frequently choose arbitration over traditional state courts due to its advantages, including speed, efficiency, party autonomy, the finality of arbitration decisions,² and confidentiality. Merchants often perceive that state courts lack a deep understanding of the complexities of commercial transactions. In contrast, arbitrators—whose authority stems from the parties' agreement—are expected to prioritise the rules and principles agreed upon by the parties.³ As a developing and highly populated country, Pakistan promotes commercial arbitration to alleviate the burden on its courts and to promote a reliable and smooth business environment. There is a significant gap between goals and achievements in Pakistan's business environment. According to World Bank statistics on the ease of doing business, Pakistan ranks 107th out of 109 countries.⁴ A country's justice system plays a crucial role in determining the ease of doing business. However, Pakistan's justice system is heavily burdened, resulting in significant delays and inefficiencies. The number of pending cases in Pakistan is rapidly increasing. As of January 10, 2025, there were 57,118 pending cases in the Supreme Court.⁵ In the Provincial High Courts and district courts, the figures are even higher. As of June 30, 2024, the pendency of cases in the High Courts of Pakistan was 347,173, while in district courts, there were 1,815,783 cases.⁶ Arbitration, considered one of the best alternatives to assist courts in the current scenario, faces challenges from excessive judicial interventions. Despite efforts to promote arbitration, the courts themselves often exceed their powers and jurisdiction, mostly during the execution/making the award, rule of the court.

The practice of scrutinising the award before it is executed is derived from the usual practice of the execution of the decree in civil cases, the awards are executed in the same manner. Section 41 of the Arbitration Act keeps the procedural powers of the court intact and the same code CPC 1908 is used for execution purposes. Whereas for the execution of the decrees section 47 CPC 1908 allows objection petition before executing the decree to minimise the doubts, and decide the questions, and objections which subsequently reduces the chances of the matter again going for appeal. Similarly, in the arbitration proceedings, the same procedure is adopted, before making the award rule of the court both parties are summoned to hear any objection. The right to file an objection

¹ Henry S Fraser, 'Sketch of the History of International Arbitration' (1926) 11(2) Cornell L Rev 185 <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1236&context=clr> accessed 12 January 2025.

² Kastriote Vlahna, Drita Krasniqi, Dafina Vlahna, and Bletrona Krasniqi, 'Arbitration and the Importance of the Arbitration Agreement' (2020) 5(2) *European Journal of Educational & Social Sciences* <https://dergipark.org.tr/en/download/article-file/1382908> accessed 12 January 2025.

³ José Moreno Rodríguez, 'Effectiveness of International Commercial Arbitration as a Dispute Settlement Mechanism' (17 January 2017) 4 <https://ssrn.com/abstract=2969845> or <http://dx.doi.org/10.2139/ssrn.2969845> accessed 10 January 2025.

⁴ World Bank, *Doing Business 2020* (World Bank 2020) <https://openknowledge.worldbank.org/server/api/core/bitstreams/75ea67f9-4bcb-5766-ada6-6963a992d64c/content> accessed 10 January 2025.

⁵ Supreme Court of Pakistan, 'Month-wise Institution and Disposal' (Supreme Court of Pakistan) <https://www.supremecourt.gov.pk/month-wise-institution-and-disposal/> accessed 10 January 2025.

⁶ Law and Justice Commission of Pakistan, *Judicial Statistics: Mid-Year Report January to June 2023* (Law and Justice Commission of Pakistan 2023) <http://www.ljcp.gov.pk/reports/3bar.pdf> accessed 12 January 2025.

petition is a vested right,⁷ But the basic principle is that the executing court has no jurisdiction to go behind the decree.⁸ The objective of the legislature is to provide an opportunity for a judgment debtor to make an objection petition even if the decree-holder holds the execution and gets the decree satisfied through some other modes.⁹ The boundaries are the same for arbitration and other civil cases but many times fall prey to judicial intervention during execution, which hinders the progress of ADR in the country contributing to the pile of pending cases and distrust among the business community. Because the purpose of arbitration was to replace the lengthy and technical process of courts not to adopt the same. The provision was expected not only to afford speedy relief to the parties in the matter arising out of the execution of the decree but also to curtail the multiplicity of litigation, and the hardships to be faced by the parties.¹⁰ However, in practice, it has often backfired due to judicial misinterpretation and bad faith by parties, making enforcement challenging.

In this article, we will examine how courts have intervened in the arbitration process and undermined its primary purpose, we will also consider the role of parties in sabotaging the arbitration and critical analysis of the new bill. Before moving forward, let us review the laws that regulate commercial arbitration in Pakistan. Currently, two arbitration acts operate in the country: the Arbitration Act 1940, which governs domestic arbitration, and the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, which governs the enforcement of foreign arbitral awards in Pakistan. Additionally, a new bill, the Arbitration Act (Arbitration Act 2024) is under development, though it has yet to be formally enacted. This act involves significant and necessary amendments, along with a few unresolved issues, which will also be addressed in this article. This writing more focuses on judicial intervention in the enforcement of domestic arbitration because foreign arbitration has gained significant improvements and fewer hindrances in enforcing foreign arbitral awards after the enactment of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 in light of the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)*. The domestic arbitration is dealt under Arbitration Act 1940.

Literature Review

Dr. Ikram Ullah's book is regarded as one of the most authoritative works on arbitration in Pakistan. He provides an excellent analysis of how judicial intervention undermines the effectiveness and purpose of arbitral awards. However, given its publication in 2021, the book does not engage with the provisions of the newly proposed Arbitration Act 2024. In contrast, this research critically evaluates the draft bill, highlighting its shortcomings in addressing judicial intervention and proposing recommendations for a more effective legislative framework.¹¹

Manzur and Rashid critically evaluate the Arbitration Act 2024, particularly highlighting the continuation of provisions allowing repeated appeals, similar to the outdated framework of the Arbitration Act 1940. Their analysis effectively underscores the lack of improvement in the sections governing appeals.¹² However, they do not propose solutions to prevent the risk of

⁷ *Allah Bakhsh v Allah Yar and others* [2017] CLC Note 9 [9].

⁸ *Port Qasim Authority v Industrial Management and Investment Co. Ltd. and 2 others* [2020] CLC 721 (Sindh) [14].

⁹ *Riaz Hussain and others v Muhammad Akbar and others* [2003] SCMR 181 [7].

¹⁰ *Muhammad Naeem v Orangaib Khan* [2013] MLD 974 [7].

¹¹ Ikram Ullah, *Arbitration Law of Pakistan* (Wolters Kluwer 2021).

¹² Ammad Manzur and Rashid Ahmad, 'Interim Relief under Pakistan's Proposed Arbitration Act: Promoting Judicial Non-Intervention?' (Kluwer Arbitration Blog, 7 December 2024)

prolonged litigation through successive appeals in arbitration cases. In contrast, this research conducts a detailed examination of appealable orders as a mechanism for judicial intervention, alongside other procedural tools, offering a critical evaluation of the Arbitration Act 2024. Furthermore, it provides concrete recommendations to shift appealable orders toward more practical and efficient mechanisms to enhance arbitration proceedings.

Saad examines judicial intervention with reference to domestic arbitration but draws more focus on addressing the enforcement of foreign arbitration. However, his analysis remains focused on identifying challenges rather than diagnosing the root causes of judicial intervention. Notably, his work does not engage with the structural and doctrinal issues that contribute to such intervention. In contrast, this research critically assesses the underlying factors driving judicial interference in arbitration and offers concrete recommendations to address these challenges, thereby contributing to a more comprehensive understanding of the issue.¹³

Hamish Khan, Dr. Zubair, and others examine key rulings and the significance of the proposed Arbitration Act 2024 but fail to critically assess its shortcomings.¹⁴ The article overlooks gaps that may still allow judicial intervention, limiting its effectiveness in ensuring arbitral autonomy. This study addresses those gaps, analysing the Act's unresolved issues and their implications for arbitration in Pakistan.

Justice Jawad Hassan acknowledges the judiciary's role in international and domestic arbitration, recognising judicial intervention and recommending judicial training. However, he does not address substantive legal failures or other causes of intervention. This study examines additional factors, including the persistent gaps in both the Arbitration Act 1940 and the proposed bill, as well as bad faith by parties, which often leads to judicial interference. While he praises institutional training efforts,¹⁵ It is oblivious to many that the high costs make them inaccessible to many litigants, limiting their effectiveness in addressing judicial intervention as discussed in this research.

Khuram provides a detailed analysis of the new provisions in the draft bill that aim to strengthen arbitration in Pakistan.¹⁶ However, his discussion lacks a critical evaluation of its shortcomings, particularly the extent to which it continues to allow judicial intervention, thereby failing to introduce meaningful reforms in this area. This study seeks to fill this gap by assessing the bill's limitations and its implications for arbitral autonomy, offering a more comprehensive examination of its impact on Pakistan's arbitration framework.

M. Taimoor Adil and others critically analyse the Arbitration Act 1940 and issues with enforcing arbitral awards but do not address the flaws in the code that invite judicial intervention. Effective

<https://arbitrationblog.kluwerarbitration.com/2024/12/07/interim-relief-under-pakistans-proposed-arbitration-act-promoting-judicial-non-intervention/> accessed 10 January 2025.

¹³ Saad Mir, 'Court Intervention in Arbitration: Pakistan's Perspective' (2016)

<https://www.pljlawsite.com/2016art8.htm> accessed 10 January 2025.

¹⁴ Hamaish Khan and others, 'A Comprehensive Analysis of Arbitration Laws in Pakistan: Key Rulings of the Supreme Court, Significance and Compatibility of Proposed Arbitration Act 2024' (2024) 4(3) International Journal of Human and Society 111.

¹⁵ Justice Jawad Hassan, 'The Role of the Judiciary and Jurisprudence in Domestic and International Arbitration' (Asian Development Bank, March 2021) <https://events.development.asia/system/files/materials/2021/03/202103-role-judiciary-and-jurisprudence-domestic-and-international-arbitration.pdf> accessed 10 January 2025.

¹⁶ Khuram Baig, 'Arbitration Reimagined: Analyzing Pakistan's New Draft Bill on Arbitration Act 2024' (2024) 6(4) Journal of Law & Social Studies 347, 347–358 <https://www.advancelrf.org/wp-content/uploads/2024/12/Vol-6-No.-4-2.pdf> accessed 10 January 2025.

reform requires both identifying problems and proposing solutions. This research goes further by examining the root causes of judicial intervention and offering recommendations for practical reforms in the Arbitration Act.¹⁷

Judicial Interventions to the Commercial Arbitration in Pakistan

The commercial arbitration system in Pakistan is affected by frequent and unchecked judicial intervention, leading to business disruptions and significant distrust in the market. There are two kinds of judicial intervention in Pakistan one is allowed by the Arbitration Act 1940, which does not pose a significant threat, and the second one is not empowered by the principles of law and is barred by Section 32 of the said Act, creating a serious issue.

Power of the Judiciary to Intervene Under the Arbitration Act 1940 in Pakistan

Some sections of the Arbitration Act 1940 allow the active judicial role in arbitration. Because, completely marginalising arbitration from the courts can be an impractical idea, as courts perform several essential supporting functions. It can be said that arbitration cannot be sustained or achieve success without the involvement of courts. In many situations, courts are needed to perform functions that arbitration cannot, with the most prominent being the enforcement/execution of arbitral awards. An arbitrator alone cannot enforce an award; this process requires the machinery of the state. Additionally, courts play other critical roles.

For instance, under Section 11 of the Arbitration Act 1940, courts can remove an arbitrator or umpire upon the application of the parties and appoint a replacement under Section 12. Section 15 empowers courts to address clerical errors or mistakes in the award, while Section 16 allows them to remit/send the award back to the arbitrator for improvements. If the arbitrator fails to make the necessary changes, the award may be rendered void, triggering Section 19, which enables the court to supersede the arbitration process when arbitrators fail to perform under Section 16. Courts also play a role in facilitating arbitration proceedings. For example, they can issue interim orders to ensure the smooth continuation of arbitration proceedings until a decree is passed under Section 18 against a party obstructing the process. The court may also annul the award under Section 26 A (3) if, after being directed to provide reasons for the award upon remittance, the arbitrator fails to comply with the instructions within the specified timeframe. While Sections 35, 36, 39, 41, and 43 provide additional mechanisms to support arbitration. Section 30, stands out as a pivotal provision that outlines some exceptional grounds (i.e. misconduct of arbitrator or issuing invalid award) for setting aside an award. This clause uninterruptedly allows the court to set aside the award or refuse to make it the Rule of the Court if it is deemed a nullity, appears prima facie illegal, is unfit to be upheld for any reason, or exhibits self-evident or apparent invalidity on the face of the record.¹⁸ Significantly, Section 32 bars any court action beyond what is explicitly provided in the Act, ensuring a balance between judicial intervention and arbitration's autonomy.

Unauthorised Judicial Intervention

Court intervention is most commonly observed during the enforcement/execution of the arbitration awards, which often leads to a chain of appeals by parties reaching the High Courts and, in some

¹⁷ Mechanism for Enforcement of Arbitral Awards in Pakistan' (2024) 2(4) *Contemporary Journal of Social Science Review* 1066 <https://contemporaryjournal.com/index.php/14/article/view/162> accessed 11 January 2025.

¹⁸ *A Qutubuddin Khan v CHEC Millwala Dredging Co (Pvt) Ltd* (2014) CLD 824 (SC), [13].

cases, the Supreme Court. This prolonged process can take as many years as a typical civil case, effectively defeating the purpose of arbitration and bringing the situation back to square one.

Arbitration is a form of proceeding in which parties themselves decide the judge (Arbitrator) for their dispute. In arbitration proceedings, the arbitrator alone is the judge of the quality as well as the quantity of the evidence, and its decision is final and entitled to the utmost respect by the courts.¹⁹ Hearing appeals and objections from the parties, courts must not forget the purpose of arbitration and must adhere to their allowed jurisdiction. As arbitration is a final determination of a dispute between parties, the review of an arbitration award cannot constitute a re-assessment or reappraisal of evidence by the court.²⁰ To add more, the court is not meant to act as an appellate body, searching for hidden errors in the arbitration process or the award. The interference is justified only if there is an obvious error of law or fact that, if ignored, would lead to serious injustice, breach a clear legal provision, conflict with established rulings of higher courts, or if there is evidence of misconduct by the arbitrator.²¹ The consideration of justice and fairness in the review of arbitral awards is no less important than their finality.²² The Supreme Court in the recent case of *Taisei Corporation v A.M. Construction Company* highlights that,

“The idea of arbitration’, writes Jan Paulsson, ‘is that of binding resolution of disputes accepted with serenity by those who bear its consequences because of their special trust in chosen decision makers.’ “Arbitration thus embodies the principles of autonomy and voluntariness, respecting the parties’ freedom to design a process that best suits their needs. It reflects a philosophical shift towards self-governance in dispute resolution, allowing parties to choose their arbitrators and the applicable law, thereby creating a more tailored and potentially equitable outcome. The role of courts in the context of arbitration has therefore evolved with a trend towards minimal interference.”²³

Some lengthy trial of arbitration cases, followed by their dismissal by the Supreme Court or High Courts, highlights the oversights made by the civil courts and High Courts during the initial stages. In a case, where the trial court repeatedly rejected the appeal of the aggrieved party and upheld the arbitral award in favour of the other party, making it the rule of the court. The High Court intervened and set aside the award. The matter was then brought before the Supreme Court, which criticised the High Court's decision as unwarranted intervention. In its judgment, the Supreme Court stated:

“The High Court has proceeded on erroneous grounds and has misapplied the applicable law to the facts and circumstances of the instant controversy, which warrants interference by this Court. We have been unable to agree with the conclusions reached by the High Court in the impugned judgment. Accordingly, the impugned judgment is found to be unsustainable in law as well as in fact and is therefore set aside.”²⁴

¹⁹ *National Highway Authority through Chairman v Messrs Sambu Construction Co. Ltd. Islamabad and Others* 2023 SCMR 1103 (SC), [5].

²⁰ Ibid.

²¹ *Federation of Pakistan through Secretary, Ministry of Food, Islamabad and Others v Messrs Joint Venture Kocks KG/RIST* [2011] PLD SC 506, C.P. Nos. 3059 & 3060/2021.

²² Ikram Ullah, *Arbitration Law of Pakistan* (Wolters Kluwer 2021) 167, ch 10.

²³ *Taisei Corporation v A.M. Construction Company (Pvt) Ltd* (2023) CA 722/2012 SC.

²⁴ *Shahin Shah v Government of Khyber Pakhtunkhwa through Secretary Irrigation Department and Others* (2022) CA 315/2022 (SC) [26].

We have another judgment where a Judge of the Lahore High Court exceeded his authority and overturned the award solely due to contentions over a few calculations of certain items in the award. The Judge disregarded the application of the doctrine of severability, which would have allowed the court to consider and uphold the remaining valid parts/items of the award, instead of setting aside the entire award. Article 15 of the Arbitration Act permits the court to modify the award but does not authorise it to reject the award in its entirety. If there is any error, the court may, under Section 16, remit/send back the award to the arbitrator to address any illegality or issue that renders the award incapable of proceeding. Only under Section 17 can the court declare the award void, and that too in circumstances where the arbitrator, despite being directed to reconsider under Section 16, fails to rectify the identified issues. The Supreme Court subsequently overturned the High Court's decision and upheld the judgment of the court of first instance. The Supreme Court struck out the miscalculated portions of Item No. 2 (Standing Bill) and Item No. 13 (Legal Fee), making the remaining award the rule of the court.²⁵

Remitting the award is the only option the court can adopt when it finds some part of the award erroneous or needs further inquiry. We have the best example of a case in which the Supreme Court of Pakistan set aside all the changes made by the courts below and remitted the award to the learned arbitrator for reconsidering the claim of damages, the Supreme Court further mentioned in the judgment that the arbitrator may decide in the light of evidence available on the record or the arbitrator may in his discretion allow the parties to lead further evidence.²⁶ The arbitrator acts in a quasi-judicial manner his decision is entitled to the utmost weight unless the misconduct is not only alleged but also proved against him,²⁷ Under section 30 of the Arbitration Act 1940. An award cannot be lawfully disturbed on the premise that a different view is possible if the facts are appreciated from a different angle. In fact, the Court while examining the correctness and legality of the award does not act as a court of appeal and cannot undertake a reappraisal of evidence recorded by an arbitrator in order.²⁸

There may be many reasons behind the intervention of the court as simple as it can be the judge who lacks fundamental concepts of the arbitration and the significance of the award, as complex as sometimes overlooking the award and extremely intricate matters or lack of experience of the district courts which are later on guided by the higher courts. For Example, in a case where the commercial court made errors in its observations regarding the respondent's application under Section 34 of the Arbitration Act, the court incorrectly relied on prior communications and a previous suit to infer an intention to waive the right to arbitration. However, Section 34 allows for a stay application at any stage of legal proceedings. Consequently, the order of the learned court was set aside and the appeal was granted by the Lahore High Court.²⁹

Judicial Intervention is not the only misstep of judges, it is better to say judges are not the instigating factor of this issue, these interventions come in place when the parties themselves do not appreciate the decision of the arbitrator. The courts do not have any jurisdiction to *suo moto* notice of the arbitrator's award. Rather, it is always the parties who after feeling aggrieved by the

²⁵ *National Construction Co v The West Pakistan Water and Power Development Authority through its Chairman* [1987] PLD SC 46.

²⁶ *M/s Joint Venture KG/Rist v Federation of Pakistan through Secretary Food, Agricultural & Coop and Another* [1996] PLD SC 108.

²⁷ *Mian Corporation through Managing Partner v Messrs Lever Brothers of Pakistan Ltd through General Sales Manager* [2006] PLD SC 169, [7].

²⁸ *Ibid.*

²⁹ *Punjab Mashhad Meat Complex and Another v Mashhad Meat Industrial Complex* [2024] CLD 1040 (Lahore), [12].

award maliciously appeal, considering it an appealable order. The fact is that in the case of arbitration, awards cannot be considered as an appealable order nor the judiciary is allowed to re-examine the award in a manner to record evidence. The court can only consider errors and illegalities that appear on the face of the record. However, not highlighting the role of parties in degrading Pakistan's commercial arbitration is an unjust approach. In the coming part of this article, we will see how parties sabotage the smooth running of commercial arbitration in Pakistan.

But the point here is that the parties' actions should not be seen as the sole or primary challenge; their conduct is often exacerbated by the judiciary's approach. Judicial intervention is influenced by a lack of understanding among some judges regarding the fundamental principles of arbitration and the significance of arbitral awards. The judges in such a situation must act as the gatekeepers, custodians of law, and as well as the custodians of arbitration agreements between parties. It is their responsibility to uphold the integrity of arbitration by respecting the arbitrator's decisions, except where clear legal errors are evident. Another reason why to put the burden of Judicial intervention more on judges is that no legal system can oblige the people, not to think malign or to consider the award as a final decision in all cases, especially where the award is appealable as the matter of right and in the cases in which great economic interest is at stake. The human behaviour most of the time does not allow us to be that rational to accept the finality of every decision made against us. To address these challenges, the judiciary must adopt a more informed and consistent approach to arbitration. Judges should possess a thorough understanding of arbitration principles and act within the bounds of the law to ensure that arbitration remains a viable and respected dispute resolution mechanism. This judicial mindset, grounded in clarity and adherence to the core values of arbitration, can help resolve these issues effectively.

Bad Faith by the Parties

It is not only judicial intervention that impedes the smooth running of arbitration, parties too are responsible for it. When the award goes against the interests of the parties they try to linger on the case and make the winner drag them into court for years. Similarly, in the case of *Orient Power Company (Pvt) Ltd v Sui Northern Gas Pipelines Ltd*, the Appellant tried to hinder the enforcement of the award by alleging it to be against the public policy (under section 7 of The Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral Awards Act 2011) in which the Supreme Court upheld the views of the High Court stating that the public policy exception should not be misused to reassess foreign arbitral awards or create new grounds beyond Article V, as this undermines enforcement obligations and encourages unwarranted challenges,³⁰ Defeating the purpose of arbitration clauses.³¹

The *Shahin Shah* case mentioned hereinabove, where the Supreme Court overturned the judgment of the High Court on intervention, also emphasises the respondent's role in undermining arbitration. Both parties voluntarily participated in the proceedings. However, the dispute was not settled between the parties. The arbitrator had to seek multiple extensions from the Trial Court to complete the arbitration and file the award:

³⁰ *Orient Power Company (Pvt) Ltd v Sui Northern Gas Pipelines Ltd* (2019) CA 1547/2019 (SC) [120].

³¹ For a detailed discussion on public policy in arbitration, see Ikram Ullah, 'Public Policy in Arbitration: Still a Long Way to Go' (2016) 9(1) Contemporary Asia Arb J 53, 53–86 <https://ssrn.com/abstract=2790651> accessed 13 February 2025.

Initial extension: Two months granted, with the matter adjourned to 14.02.2005.

Second extension: Another two months granted, with the case fixed for 15.07.2005.

Final extension: Two additional months were granted, and the award was filed on 15.09.2005.

Despite these multiple extensions, the case was adjourned to 15.10.2005, when the respondent filed objections to the trial court, which were overturned and the award was made a rule of the court. Subsequently, the gates of the High Court were knocked whose decision was overturned by the Supreme Court and made the award rule of the court.³²

In another case, the parties agreed to arbitration as their chosen method for resolving disputes. The court appointed an arbitrator, and the proceedings were set in motion. However, despite being given multiple notices, the petitioner failed to appear or participate in the arbitration process, reflecting a lack of seriousness. As a result, the arbitrator issued an *ex-parte* award in favour of the respondent. The petitioner, dissatisfied with this outcome, challenged the award repeatedly, eventually taking the matter to the Supreme Court. Nonetheless, the Supreme Court upheld the decisions of the lower courts, affirming the validity of the arbitrator's award.³³ This case exemplifies that judicial intervention does not always undermine the essence of arbitration; rather, the recklessness or ill intentions of the parties can also play a significant role. Sometimes parties go to the extent of accusing the arbitrator of misconducting the proceeding to somehow get the award overturned by the courts under section 30 of the Arbitration Act 1940. The same happened in the case of *Pakistan Steel Mills Corporation v Messrs Mustafa Sons (Pvt) Ltd*.³⁴ The petitioner accused the arbitrator of misconduct in conducting the arbitration proceeding and stated that the arbitrator ignored the principles of natural justice, although failed to prove the same when asked by the Supreme Court. The petitioner also challenged the certificates issued by the engineer, The Supreme Court dismissed the petition and observed that,

“The plea that the engineers exceeded their power is without any substance. It only means that so long they supported the petitioner, they acted according to law and when they exercised their authority in favour of the respondent, their act has become mala fide. This plea of the petitioner deserves to be rejected out rightly.”³⁵

Such conduct by the parties not only damages the reputation of the arbitrator but also undermines the arbitration process and wastes the courts' time.³⁶

Government Efforts and Legislative Development the Arbitration Act 2024

The new bill, Arbitration Act 2024 comes across as more detailed and comprehensive, covering many issues that were previously dealt with through authoritative case laws just because of *lacunas* in the Arbitration Act 1940. If we recall the earlier details of this article, we will see how some of the jurisprudence developed under the old act has been carried forward and incorporated into the new legislation, replacing the Arbitration Act 1940. It's a positive step forward, as several

³² *Shahin Shah v Government of Khyber Pakhtunkhwa through Secretary Irrigation Department and Others* (2022) CA 315/2022 (SC) [2].

³³ *Injum Aqeel v Latif Muhammad Chaudhry and Others* (2021) CPs 3059 and 3060/2021 (SC) [8].

³⁴ *Pakistan Steel Mills Corporation v Messrs Mustafa Sons (Pvt) Ltd* 2003 PLD SC 301, [15].

³⁵ *Ibid*, [21].

³⁶ Additional case laws relevant to bad faith of the parties are provided for further reference. See *Federation of Pakistan v Messrs Joint Venture Kocks K.G./RIST* 2011 PLD SC 506; *Government of Khyber Pakhtunkhwa v Muhammad Fayaz* 2024 CLC 1876 (Peshawar HC).

issues have been addressed and improved upon. What's more, the new procedural framework takes similar inspiration from the UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments adopted in 2006). Before going for the critical analysis of this new bill. First, we should go through and appreciate the improvements made. Therefore, the contemplation shall be divided into two parts.

Inspirations from UNCITRAL Model Law on International Commercial Arbitration (1985, with Amendments Adopted in 2006)

The Arbitration Act 2024 introduces several key provisions inspired by the UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments adopted in 2006). These changes aim to address challenges encountered under the earlier Arbitration Act 1940 and align Pakistan's arbitration framework with international standards. The key changes include,

Section 2(J) incorporates a term for international commercial arbitration and Section 30 allows the choice of law applicable to the substance of the dispute, mirroring Article 28 of the Model Law. Section 8, Clause 5 validates arbitration agreements executed in digital and electronic formats, while Clause 6 recognises agreements formed through the written (physical or electronic) exchange of statements, claims, and defenses, consistent with Articles 7(1) and 7(2) of the Model Law. Section 12(3) eliminates even numbers of arbitrators and mandates the appointment of an umpire in such cases, reflecting the principles of Article 11 (2)(3). Section 14 emphasises the independence and impartiality of arbitrators, derived from Articles 11(5) and 12, while Section 15 details the process for challenging arbitrators, requiring initial applications to be made to the arbitral tribunal, as provided under Articles 13 and 14. Section 19 empowers arbitral tribunals to order interim measures, such as securing disputed amounts, granting injunctions, and providing other remedies, aligning with Article 17, whereas the effect of interim was limited under Section 27 of the Act of 1940. Sections 22 and 23 address the seat and venue of arbitration, the commencement of proceedings, and their consolidation, reflecting Articles 20 and 21. Section 24(1) grants parties the freedom to choose the language of proceedings, consistent with Article 22. The Act also introduces a mechanism for settlement under Section 33, allowing arbitrators to employ mediation, conciliation, or negotiation methods. The outcomes of these methods are binding as arbitral awards, inspired by Article 30 which allows settlements. Section 34 equips arbitrators with the authority to grant final relief, including specific performance, and injunctions, and Section 38 delegates to arbitrators the power to correct, interpret, and render additional awards—powers that were previously the domain of courts the rectification or cancellation of deeds, are consistent with Articles 17, and 33.

These amendments establish a better and modernised legal framework, effectively filling a lot of lacunas that existed before, and harmonising Pakistan's arbitration practices with international standards, and ensuring greater efficiency, and alignment with global arbitration norms.

Role of Jurisprudence

Some provisions in the Arbitration Act 2024 draw inspiration from jurisprudence settled by the courts, particularly Section 11, which addresses public policy and arbitrability. This section narrows and clarifies the scope of public policy, a concept that was previously misused to challenge foreign awards under the Arbitration Act 1940. Such misuse was later rectified through court judgments.

Under the 1940 Act, the grounds for challenging an award were narrowly defined, consisting of only three clauses. This caused significant ambiguity, especially with Clause C, which stated that an award could be set aside if it was "improperly procured or is otherwise invalid." The ambiguous words like otherwise invalid and improperly produced don't define any limits. The absence of specific limitations and guidelines left courts uncertain about whether to act as a court of appeal, restart the case, or call for new evidence. Over time, jurisprudence clarified that courts should limit their scrutiny to the apparent aspects of an award without re-examining evidence or delving deeply into the award as if retrying the case. These judicial clarifications are now codified in Section 39 of the Arbitration Act 2024, which provides comprehensive grounds for challenging an award, leaving little room for ambiguity. Specifically, 39 Clause 4 states that courts may only set aside an award if there is a patent illegality on its face. Detailed explanations of these grounds further simplify the process for the judiciary.

Additionally, Section 40 reinforces the finality and binding effect of arbitral awards, a topic that has been a central point of debate in this research paper. Under the previous law, the finality of awards was a contentious issue, often leading to confusion among interpreters. The new provision addresses this confusion and aligns the law with international arbitration practices. Another significant addition is Section 44, which introduces the concept of a lien on arbitral awards and deposits related to costs. Previously, only the courts had the authority to impose a lien. Under the new act, this authority is granted to arbitrators, empowering them to refuse to deliver an award until the costs are paid. In the event of a dispute over costs, the matter may still be referred to the court for resolution.

The Act also introduces the High Court Arbitration Regulation 2024, establishing a 7-2 member High Court Arbitration Council at the High Court level. This council will consist of arbitration experts tasked with advising and regulating arbitration matters. Key responsibilities of the council include appointing arbitrators, overseeing arbitration proceedings under the rules, advising the Chief Justice of the High Court on procedural changes, and determining arbitration costs.

The developments incorporated into the Arbitration Act 2024, inspired by the UNCITRAL Model Law on International Commercial Arbitration and prior judicial interpretations, reflect significant progress in addressing the systemic lacunas of the previous framework. However, despite these advancements, certain issues remain unaddressed in the new amendment bill. A critical evaluation of the legislation is therefore necessary to assess its overall effectiveness and potential areas for further improvement.

Critical Analysis of the Arbitration Act 2024

Returning to the main agenda "Judicial Intervention". Although excellent efforts are made to align the framework with international standards, unfortunately when we seek any provision which can prevent judicial intervention in the right way, we could not find any, except a few provisions, such as an interim order, the power of granting specific performance and challenging the procedure of arbitration to arbitral tribunal first under section 15. These minor changes somehow enhance the role of the arbitrator but they cannot prevent judicial intervention. Still, this huge challenge is unaddressed. To prevent judicial intervention we must solve the problem from the right end in the right way. There are still many lacunas that this act failed to fill. Let's have a look at them.

Appeals Rather than Revision or Summary Trials

First of all, Appeals cases of an arbitration award are inherently invalid. When the award itself in nature is a final order of an arbitrator acting as a quasi-judicial authority, and where it is repeatedly explained by the decisions of the Supreme Court, that courts will not sit as the court of appeal while examining challenges against the award,³⁷ then the procedure is flawed which entertains the appeal at the first-hand, the precedents which were holding appeals against awards are not made the part of Arbitration Act 2024. Hence nothing changes from this angle. Section 42 of the Arbitration Act 2024 lists appealable orders that remain sabotaging as of 39 of the Arbitration Act 1940, allowing enormous room for appeals. Although some matters are not of a nature that can be resolved by the arbitrators themselves and must be referred to the court, but why in appeal, why not in revision or as a summary trial first, such as matters of section 18(2) plea concerning the existence or validity of the arbitration agreement, 18(3) plea that the arbitral tribunal is exceeding the scope of its authority and section 19 matters of Interim measures ordered by the arbitral tribunal. What is so complicated in these matters, that they are opined to court to constitute a trial on it from the start. The court can easily examine such complaints in a summary manner by just scrutinising the contract and proceeding details of the tribunal. 18(3) matter concerning the jurisdiction is a trail of revision, not of appeal, in appeals trails are built again from scratch. It is a common concept of understanding that, unless otherwise provided as a right, appeals are always made in matters of law and fact,³⁸ and the matters of jurisdiction are settled in revision.³⁹ The matters regarding the award should be challenged in revision if it is about jurisdiction and some errors. Certain aspects that fall under appeal should be dealt with under summary trial before going for the appeal, as it is essential to first establish apparently whether it is misconduct of trial, violation of natural justice or is against public policy and other such grounds as provided under Section 39 of the Act.

We can see the attempt that should have been made is ignored and this act substantively seems failed to lower the burden of the courts. Most probably the new powers allotted to arbitrators under sections 18 and 19 will add a burden on courts where only a few powers were allotted in the old enactment and they were being challenged. The appealable powers allotted in the new act will create a lot of traffic in the future, there must be a check on arbitrators no doubt by it is out of understanding why in appeal? An award or an order by the arbitrator should not be subject to appeal. They must be examined first in the form of a summary trial, and if any irregularity is found at its face then in that case court can entertain the trial as an appeal case. As we have gone through how arbitration awards and orders must be dealt with no delay, as arbitration is a time-saving device, courts must only be used to enforce arbitrator's orders and provide a check on it not to replace them. As Justice Mian Gul Hassan Aurangzaib in his speech said that,

“There is a mechanism provided where you can challenge an arbitration award but in that mechanism, the courts must be careful that they should not sit over such a challenge like a court of appeal it cannot re-hear the case it cannot substitute its own findings for those of the arbitrator and there's a very narrow keyhole through which the award has to be scrutinised there has to be an error apparent on the surface of the award.”⁴⁰

³⁷ *Mian Corporation through Managing Partner v Messrs Lever Brothers of Pakistan Ltd through General Sales Manager* [2006] PLD SC 169, [7].

³⁸ Code of Civil Procedure 1908, s 100 (Pakistan).

³⁹ *Ibid*, s 115 (Pakistan).

⁴⁰ Justice Mian Gul Hassan Aurangzaib, ‘Speech on Arbitration Law in Pakistan | Book by Dr. Ikram Ullah’ (YouTube, 11 March 2022) https://youtu.be/N6QikChOI_s?si=FZ3cKP3rgcz5avzN accessed 27 January 2025.

Chain of Appeals Remains Constant

Section 42, which governs appeals, states that courts may hear appeals against decrees refusing to refer parties to arbitration (Section 9), granting or refusing interim measures (Section 10), or setting aside or refusing to set aside an arbitral award (Section 39). It means once the arbitration will be challenged in court and after that, the court's decree can again be challenged in appeal. After that, no second appeal is allowed as per 42(3) but the proviso of this section allows the Later Patent Appeal against the order of the single judge of the High Court, and in the same section it is made clear that there is no bar to the appeals in the Supreme Court. No matter what else has changed, the chain of appeal remains constant, and these chains damaged the purpose of arbitration till now. Notably, this structure is neither inspired by established jurisprudence nor aligned with UNCITRAL Model Law principles.

Article 13 of the UNCITRAL Model Law on International Commercial Arbitration outlines the procedure for challenging an arbitrator's conduct, stating that once the arbitral tribunal decides on the challenge, it can only be reviewed by a court, with no further appeal. The tribunal then proceeds with the award. In contrast, Section 15 of the Arbitration Act 2024 allows an additional appeal after the tribunal and the court's decision. If unsuccessful, the issue can still be used as a ground to challenge the award under Section 39. Similarly, Section 18(2) and (3) permit challenges to an arbitration clause's validity and claims of the tribunal exceeding its authority, even after court determination—whereas Article 16 of the Model Law prohibits further challenges on these grounds. It does not stop here, again these matters remain appealable under Section 42, creating an extended chain of appeals. Unlike the Model Law's Article 34, which strictly limits grounds for setting aside an award, the Arbitration Act 2024 allows repeated challenges, undermining finality and efficiency in arbitration.

The UNCITRAL Model Law is not a binding legal framework but rather a legislative guide that countries may adopt to the extent they see fit. A notable example of its practical influence is Singapore's International Arbitration Act (IAA). Specifically, Section 3 restricts appeals on both questions of law and fact. This provision, directly inspired by the Model Law, effectively eliminates the right to appeal, reinforcing finality in arbitration. Although Article 34 of the Model Law provides limited grounds for challenging an award, these are narrowly defined and largely align with those permitted under Singapore's arbitration framework. Additionally, Section 48 of the Singapore Arbitration Act (AA) further restricts appeals, allowing them only on questions of law while barring appeals based on factual disputes or other grounds. Rather than creating obstacles, these provisions have contributed to the success of Singapore as a leading arbitration hub. Singapore is now recognised as the most preferred arbitration seat in the Asia-Pacific region and, alongside Hong Kong, ranks among the top five global arbitration seats. It is also the second most preferred seat for international energy arbitration.⁴¹ Judicial decisions further reinforce Singapore's pro-arbitration stance. In *BLB and another v. BLC and another*, the Singapore Court of Appeal confirmed that errors of fact made by an arbitral tribunal are not subject to judicial review. Instead, if errors need to be rectified, the award must be remitted to the arbitrator, with courts having no authority to intervene or set aside the award on factual grounds.⁴² A related case

⁴¹ Andre Yeap SC, Kelvin Poon, and Avinash Vinayak Pradhan, 'The Rise of Arbitration in the Asia-Pacific Region' in *The Asia-Pacific Arbitration Review 2024* (Global Arbitration Review, 26 May 2023)

<https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2024/article/the-rise-of-arbitration-in-the-asia-pacific-region> accessed 27 January 2025.

⁴² *BLB and another v BLC and another* [2014] SGCA 40.

further underscores this approach, the court held that even if a tribunal made an incorrect factual determination, it is not a valid ground for setting aside an award. The court explicitly stated:

“In sum, I dismissed SSGC’s application to set aside the Award because I did not think the Award was perverse and manifestly unreasonable, and even if it was, there was no provision in the Act which enabled me to set aside the Award on that ground per se...”⁴³

This underscores how a clear and consistent legal framework minimises judicial interference, upholds the finality of arbitration, and enhances Singapore’s position as a leading arbitration hub. Another key example is Switzerland, which is widely regarded as one of the world’s top arbitration venues. Switzerland fosters efficient international arbitration by imposing strict limitations on the grounds for setting aside an arbitral award. If a tribunal seated in Switzerland issues an award, it can only be challenged on very limited grounds, and only before the Swiss Federal Tribunal, the country’s highest judicial authority. Moreover, parties can even waive their right to challenge an award entirely, further reinforcing finality. The Swiss Federal Tribunal does not examine the merits of the case unless doing so is essential to assessing arbitral jurisdiction or substantive public policy.⁴⁴

While the grounds for challenging an international arbitral award in Switzerland remain highly restricted, the same does not apply to domestic arbitration involving parties domiciled in Switzerland. From an international perspective, this makes Switzerland an ideal seat for arbitration, providing both certainty and efficiency.⁴⁵ Examining such trends highlights an important reality: solving arbitration-related issues does not require working against existing frameworks but rather aligning them with global best practices. The key factor is building trust—both nationally and internationally—by ensuring arbitration remains a reliable dispute resolution mechanism. This trust is cultivated by understanding what business entities and stakeholders seek, minimal delays and interference, a business-friendly environment, speedy and effective justice, and Confidentiality in dispute resolution.

This is precisely where arbitration plays a crucial role. The laws governing arbitration must balance efficiency with fundamental principles of justice, ensuring that arbitration remains a trusted and attractive mechanism for resolving international disputes. The limited appeal rights in the arbitration system of Singapore and Switzerland stand as a practical example for Pakistan to adopt these tested systems to reduce the chain of appeals.

Flexibility for Judicial Intervention

In addition to the issue of the chain of appeals, another challenge is the flexibility granted to courts, which leaves room for judicial intervention. The Act does not uphold the jurisprudence established in cases like *National Highway Authority v. Messrs Sambu Construction Co. Ltd.* and *Taisei Corporation v. A.M. Construction Company (Pvt) Ltd.*, nor does it prevent courts from interfering with arbitral awards. Although one can say that Section 39 (4) discusses that “the court

⁴³ *Sui Southern Gas Co Ltd v Habibullah Coastal Power Co (Pte) Ltd* [2010] SGHC 62.

⁴⁴ Simon Gabriel, Axel Buhr, Andreas Schregenberger, and Roxane Schmidgall, 'Arbitration in Switzerland' in *Chambers Global Practice Guide: International Arbitration 2023* (GABRIEL Arbitration 2023) <https://www.gabriel-arbitration.ch/files/Arbitration-in-Switzerland.pdf>

⁴⁵ Matthias Scherer and Laura Azaria, 'Arbitration Guide: Switzerland' (International Bar Association Arbitration Committee, October 2023) 15 <https://www.lalive.law/wp-content/uploads/2024/09/ArbitrationguidelinesSWITZERLAND.pdf> accessed 27 January 2025.

may” set aside the award if it finds an illegality at the face of it. But no provision binds the court to only set aside the award if there is an illegality at its face, it remains again at the discretion of the court.

Section 19 empowers the arbitral tribunal to grant interim relief, including appointing guardians, preserving or selling disputed goods, securing disputed amounts, granting injunctions, and maintaining the *status quo*. However, Section 10 grants courts the same interim relief powers, allowing parties to seek judicial intervention at any stage—before, during, or even after the tribunal’s award, except after enforcement proceedings under Section 41. This creates uncertainty about the legislature’s intent to limit court interference, as parties can challenge or circumvent arbitral decisions by seeking contradictory relief from the courts. As we have gone through the prior part of this article how parties to the arbitration exploit the relief of challenging the award and orders of the arbitrator. Such provision despite granting powers to the arbitral tribunal may make the working opposite, where in the old statute it was the choice of parties to empower the tribunal through arbitration clause to grant interim awards, and the powers of the court were prominent in this matter under old enactment, without confusion. Here in the new enactment, we can see an open hand given to parties to seek interim orders from courts if they do not like the interim order passed by the arbitrator or if they suspected an order against them from the tribunal, in both cases, the aggrieved party can reach court and this will ultimately lead to the judicial intervention in a more confusing way. Although sub-section 3 of the same section seems like a bar on court intervention from the other angle it allows the court to intervene if it finds that the tribunal cannot provide adequate relief. Now it remains at the discretion of the court, which is irrelevant because the court has intervened already examining the interim order and complete intervention is at the will of the court by intervening completely as in the past. The room is still open for courts to play just by deeming justified to intervene as in the past. Section 6 says that the court will not intervene unless otherwise provided by this act, I think the court doesn’t have to, the room is too wide left by this bill for courts to intervene, this is something unlearned from the past. After reading in detail the process adopted its incorporation and explanation. The ultimate hold returns to court, which simply allows the party first to adopt a detailed procedure and then again go to court and create the same situations as it was in the past.

Technological Challenges

Section 8, Clause 3 of the Arbitration Act 2024 states that an arbitration clause must be in writing. Clause 4 further clarifies that "in writing" does not necessarily mean a formal arbitration contract but can take any form, irrespective of an oral agreement. Clause 5 expands on this by specifying that "any form" includes electronic formats, without restriction to any particular service, as long as it is accessible for the intended purpose. Moreover, Clause 6 states that an arbitration agreement does not need to follow a specific format or draft—it can be established through communication, including a response to a message, or an offer of arbitration that remains uncontested by the other party. While such provisions align with modern technological advancements, their potential benefits and drawbacks must be critically examined.

The inspiration for Section 8 comes from Article 7 of the UNCITRAL Model Law on International Commercial Arbitration, which validates electronic communications and treats undisputed arbitration claims as equivalent to formal arbitration agreements. This provision is particularly relevant to private international law—often referred to as conflict of laws—by reducing uncertainties regarding party autonomy in choosing jurisdiction and applicable law. Given the increasing digitisation of cross-border trade, such provisions facilitate international commercial

arbitration, as modern transactions are largely conducted through digital platforms where parties interact and execute agreements electronically. However, potential risks and vulnerabilities must be considered. The provision could be exploited by certain ambiguities, and fraudulent purposes, as digital communications can be easily manipulated. Relying on digital communications to validate arbitration agreements may create many ambiguities which may further lead for court to difficulty in reaching concrete standing. Imagine two parties, Ali and Bilal, are discussing a business deal via email. Ali writes, "We can deliver 500 units at \$10 each, with a 5% discount for prompt payment and arbitration is better in case of dispute." Bilal responds, "Sounds good."

The ambiguity here can come from several points:

1. **Interpretation of "Sounds good":** Bilal's response could be seen as an agreement, but it's not entirely explicit. Is he agreeing to the exact terms, or just expressing general interest?
2. **Terms of "prompt payment":** "Prompt payment" isn't defined. Does it mean payment within a day, a week, or some other timeframe?
3. **Discount Application:** There's no clarity on how the discount is applied or what constitutes "prompt" in this context.
4. **Arbitration is Better:** Arbitration is better or arbitration will be preferred instead of court?
5. **In Case of Dispute:** Dispute is unclear as well, whether every type of dispute or a certain one.

Communications are always linked to many circumstances and flexibilities; it's not always if, that, or yes or no. Such communication may only discuss a small and ambiguous intent of the parties. Physical forms of arbitration contracts are drafted in detail with procedures, names of arbitrators, etc., and matters to be referred to arbitration.

Various electronic services allow message verification, but they are also susceptible to hacking, enabling the alteration or removal of crucial conversations. This raises concerns about the authenticity and security of arbitration-related communications. While some may argue for the adoption of smart contracts—using blockchain technology to safeguard digital agreements from tampering and party non-compliance—the broader issue is the reliability of digital communication as evidence in arbitration proceedings, well this can be a good idea but it's a far approach and at this level it seems away from the government to adopt such technological innovation that frequent, which they should be. Moreover, volatile data servers and hackable devices may not be the most secure approach to preserving future obligations. The conventional method of securing agreements through written contracts, signed in the presence of witnesses and notarised, remains a better and reliable option for domestic arbitration contracts. While digital arbitration agreements offer practical advantages in private international law—where in-person interactions can be time-consuming and impractical—the situation differs for domestic commercial arbitration within Pakistan. Given the risks of fraud and data breaches, paper-based contracts remain a preferable option for domestic arbitration, not only to mitigate security concerns but also to reduce judicial complexities in determining the authenticity of digital agreements.

As a newly enacted law facing numerous challenges, the Arbitration Act 2024 will take time to develop its jurisprudence. While it provides a structured arbitral framework, its practical implementation remains difficult in Pakistan, where even basic arbitration principles took years to establish. A legal framework alone cannot resolve systemic issues. The initial years will likely see hurdles as judges and practitioners adapt. Concerns over electronically documented arbitration agreements and risks of fraud further highlight the need for stricter safeguards. While challenging the Act from a single perspective may be unjustified, history suggests these challenges are

foreseeable. Without a shift in judicial understanding, its effectiveness will remain limited. Despite its comprehensive provisions, success hinges on judicial expertise—no law can fulfil its purpose if those applying it lack clarity and competence.

Essential Measures to Be Taken

Matters relevant to revision added to the appeal must be shifted to revision. The chain of appeals, such as the second appeal and LPA, must be removed, allowing revision only against the decree passed by the court of first instance. Direct appeals to all interim orders and matters stated in Section 42 must be prohibited by this bill, ensuring that the judge first examines such matters under summary trial. In the summary trial, judges must determine whether the matters can be dealt with under appeal. This article explores various models and approaches that can be adopted to limit excessive appeals in arbitration. It does not provide a single recommendation, the committee may consider any of the best in the interest of justice. Again the arbitration frameworks of Singapore, Hong Kong, and Switzerland serve as global benchmarks, demonstrating how well-structured legal systems can enhance the efficiency and finality of arbitration. Adopting similar approaches could help reduce the annulment ratio while reinforcing trust in arbitration as a preferred dispute resolution mechanism.

To set aside an award, it must be made mandatory to first examine whether any illegality is apparent. If no illegality is found, the court must refrain from re-entering into the award, calling evidence again, or unnecessarily prolonging the process. For this purpose, Section 39(2) must be amended by replacing the word "may" with "shall" to ensure a more structured and predictable judicial approach.

The recognition of electronic conversations as valid arbitration agreements must be sustained for international arbitration, given its global acceptance and necessity. However, for domestic arbitration, this validity must be removed, as written arbitration agreements with witnesses can be easily managed in domestic commercial arbitration. This measure will help prevent ambiguity, fraud, and hacking, which could otherwise lead courts into confusion and unnecessary complications.

Additionally, special provisions must be introduced to impose high penalties on parties that knowingly prolong arbitration proceedings, thereby sabotaging the very purpose of arbitration. While removing space for repetitive appeals will already curb unnecessary interventions, punitive measures will further discourage deliberate delays and abuse of process.

However, the primary challenge does not lie in the law itself but in the judiciary's understanding of arbitration principles. Merely enacting detailed provisions cannot ensure compliance or prevent unwarranted judicial intervention. Legal details, while intended to provide clarity, can sometimes introduce complexity and flexibility that may confuse interpreters. Effective implementation depends on the judiciary's ability to grasp the nuances of arbitration, as courts play a pivotal role in enforcing arbitration laws. While the changes introduced in the Arbitration Act 2024 are a positive step, they do not guarantee seamless implementation. Judges must be well-versed in arbitration ideology to minimise unnecessary judicial interference. Past experiences with the simpler Arbitration Act 1940—characterised by misinterpretation and misuse—indicate the potential for similar challenges to arise under the more complex framework of the 2024 Act.

To address this, capacity-building programmes for judges do exist in Pakistan, but they operate on a limited scale. Every district judge and High Court justice must understand the Arbitration Act through government-led training, not costly private institutes. The government should also establish affordable arbitration training centres to expand access for legal professionals. Establishing such institutions will not only train future arbitrators but also reduce the burden on courts and strengthen commercial arbitration in the long run.

Additional measures should include ensuring transparency in the annulment of arbitration awards. Institutions such as the Law and Justice Commission of Pakistan should publish annual reports detailing the number of rejected awards, identifying key challenges faced in arbitration, and outlining the measures taken to address these issues.

Conclusion

The challenges facing commercial arbitration in Pakistan are deeply rooted in judicial intervention, procedural inefficiencies, and the reluctance of parties to accept arbitral awards. While arbitration is meant to be a faster and more efficient alternative to litigation, the frequent involvement of courts has significantly undermined its effectiveness. Despite clear legal principles that limit judicial interference, lower courts often overstep their authority, prolonging disputes that arbitration was designed to resolve efficiently. This not only defeats the purpose of arbitration but also discourages businesses from relying on it as a viable dispute resolution mechanism.

The Arbitration Act 2024 brings several positive changes, aligning Pakistan's arbitration framework more closely with international standards. Provisions limiting public policy scope, and expanding arbitrators' powers reflect a step in the right direction. However, the Act still does not go far enough in addressing the core issue—unnecessary judicial interference. The continued chain of appeals and the broad discretion granted to courts in setting aside awards suggest that arbitration in Pakistan will continue to be entangled with litigation. Premature provisions, such as recognizing electronic communications as valid arbitration clauses, are ill-suited to Pakistan's underdeveloped infrastructure and vulnerable to cyber threats. Additionally, retaining the same loopholes for appeals in the new legislation is not just an oversight but a repetition of a significant flaw that should have been addressed before enactment.

That said, the blame does not rest solely on the judiciary and legislature. Parties to arbitration frequently exploit procedural loopholes to delay enforcement, often challenging awards in bad faith. Instead of treating arbitration as a binding process, they view it as a preliminary step before seeking judicial intervention, which completely contradicts the principle of finality in arbitration. Unless there is a fundamental shift in legal culture—where both judges and parties respect the autonomy of arbitration—the system will continue to face the same setbacks.

To make arbitration a truly effective mechanism in Pakistan, reforms need to go beyond legislation. The judiciary must adopt a restrained approach, recognising that its role is to support arbitration rather than override it. Additionally, stronger procedural barriers should be in place to limit unnecessary appeals and prevent the misuse of judicial review. More importantly, there must be a broader effort to instil confidence in arbitration, ensuring that parties trust the process instead of seeing courts as an escape route when an award does not favour them. Only through a combination of legal reform, judicial discipline, and a shift in mindset can arbitration fulfil its intended role as a reliable and efficient means of resolving commercial disputes.